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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,736	12/05/2003	Jeffrey T. Mason	001P9905.P02	1712
7590	09/06/2005		EXAMINER	
Rodney F. Brown 3365 Baltimore Street San Diego, CA 92117			LEWIS, KIM M	
			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 09/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/728,736	MASON ET AL.
	Examiner Kim M. Lewis	Art Unit 3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-19 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
 5) Claim(s) 11-19 is/are allowed.
 6) Claim(s) 1-3,5-7 and 9 is/are rejected.
 7) Claim(s) ____ is/are objected to.
 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 03 May 2004 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/24/04</u> . | 6) <input checked="" type="checkbox"/> Other: <u>Detailed Action</u> . |

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 5/24/04 has been received and made of record in the application file wrapper. Note the acknowledged PTO-1449 form enclosed herewith.

Specification

2. The disclosure is objected to because of the following informalities:

Page 7, line 17, "28" should read --12--.

Appropriate correction is required.

Specification

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the phrase "...tension strap lever" used throughout the claims lacks proper antecedent basis in the specification.

Double Patenting

4. Claims 1-3, 5-7 and 9 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 5-7 and 10 of copending Application No. 10/420,344 ("the '344 application"). Although

the conflicting claims are not identical, they are not patentably distinct from each other because as can be clearly seen from claims 1-3,5-7 and 10 of the '344 application are of the claimed structural limitations of claims 1-3, 5-7 and 9 of the instant invention are recited except the following:

- 1) The preambles of claims 1-3, 5-7 and 9 recite either "A knee brace" or "The knee brace" while the preambles of claims 1-3, 5-7 and 10 of '344 application recite, "An orthosis" or "The orthosis. The applicant should note that "a knee brace" is an "orthosis", therefore the "orthosis" language is not patentably distinct from the "knee brace" language.
- 2) Line 12 of claim 1 of the instant invention recites "said tension strap engaging said compression member", while line 12 of claim 1 of the '344 application recites "said tension strap connected to said compression member". The "connected to" language is not patentably distinct from the "engaging" language because if the tension strap is connected to the compression member than it necessarily engages the connecting member.
- 3) Line 2 of claim 6 of the instant invention recites "said tension strap engages...", while line 2 of claim 6, recites "said tension strap is connected...". Again the "connected to" language is not patentably distinct from the "engaging" language because if the tension strap is connected to the compression member than it necessarily engages the connecting member.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Allowable Subject Matter

5. Claims 11-19 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is (571) 272-4796. The examiner can normally be reached on Mondays to Thursdays from 5:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett, can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Kim M. Lewis
Primary Examiner
Art Unit 3743

kml
August 29, 2005